

June 25, 2014



Talbot County Planning Commission
Final Decision Summary

Wednesday, March 5, 2014 at 9:00 a.m.

Bradley Meeting Room

11 N. Washington Street, Easton, Maryland

Attendance:

Commission Members:

Thomas Hughes
Michael Sullivan
Paul Spies
Jack Fischer

Staff:

Sandy Coyman, Planning Officer
Mary Kay Verdery, Assistant Planning Officer
Brett Ewing, Planner I
Elisa Deflaux, Environmental Planner
Ray Clarke, County Engineer
Carole Sellman, Recording Secretary

1. Call to Order—Commissioner Hughes called the meeting to order at 9:00 a.m. He explained that the Commission was short one member and tie votes result in a failed motion. If any applicant chooses they can withdraw without penalty until the next month's meeting. All the applicants indicated they desired to proceed.

2. Decision Summary Review—February 5, 2014—The Commission noted the following corrections to the draft decision summary:

- a. Line 60, correct spelling, Fischer.
- b. Line 159, add following: "The Commission discussed connection policies and connecting Martingham to the Region II system and the appropriateness of reassigning capacity from the municipality St. Michaels to the unincorporated community of Martingham, while maintaining an excessive allocation for three rural villages.
- c. Line 316, should be 3:41 p.m.

Commissioner Spies moved to approve the draft Planning Commission Decision Summary for February 5, 2014, as amended; Commissioner Fischer seconded the motion. The motion carried unanimously.

3. Old Business

- a. Comprehensive Water and Sewer Plan Amendment to Connect the Martingham Community to the Region II Waste Water Treatment Plant

Commissioner Hughes clarified that there were three proposed resolutions: previously reviewed Resolution 209; Resolution 210 reallocating flow exclusively from the Royal Oak, Newcomb and Bellevue service area; and an amended

52 Resolution 210. He also noted that a second version of Resolution 210 was sent
53 out via email yesterday.

54
55 Commissioner Hughes ruled that addressing Resolution 209 and 210 as amended
56 would be out of order. He noted that he had consulted state law, the Charter, and
57 *Robert's Rules of Order* and based his decision on these sources.

58
59 The Commission determined to review Resolution 210.

60
61 Commissioner Fischer stated we are confined by the Comprehensive Plan as well
62 as COMAR. Commissioner Fischer shared with the Commission text from the
63 Comprehensive Plan and state law which all support the decision which was made
64 last month. Commissioner Sullivan stated that the remaining wastewater capacity
65 sufficient to serve 137 additional homes.

66
67 Commissioner Hughes noted the Planning Commission's job is to determine if
68 this resolution is consistent with the Comprehensive Plan, the development
69 patterns, the land uses and the densities or intensities. On page 51 of the
70 Comprehensive Water and Sewer Amendment, at line 164, the final sentence says
71 this amount of the general capacity is inconsistent with the Comprehensive Plan
72 as it would increase the size of these three villages by 122%. The Comprehensive
73 Plan states that we are to maintain the existing character and density of the
74 villages, so enlarging villages by 122% would not be consistent with this policy.
75 Further Resolution 210 provides sewer service- to a developed area with a failing
76 wastewater system, again meeting Comprehensive Plan policies. Adopting this
77 resolution does not prevent future review of sewer service capacity and allocation
78 among the villages and the Town of St. Michaels. Commissioner Hughes
79 expressed support for Resolution 210 as it meets these Comprehensive Plan
80 policies. Commissioner Spies agrees as it is written, it is consistent with the
81 Comprehensive Plan.

82
83 Commissioner Hughes asked for public comment.

84
85 Jeanne Bryan, Royal Oak, Maryland, stated the Planning Commission stated to
86 the Planning Commission that she believed Resolution 210 is inconsistent with
87 the Comprehensive Plan given the 13 approved resolutions amending the water
88 and sewer plan. Specifically Resolution 185 and 201 addressed the Royal Oak,
89 Bellevue and Newcomb sewer allocations, so what has changed. She asked how
90 can the prior resolutions that have been reviewed and approved now be
91 inconsistent.

92
93 Commissioner Hughes stated the only Resolution before this Commission today is
94 Resolution 210 and the Commission can only address its consistency with the
95 current Comprehensive Plan.

97 Clint Wadsworth, Royal Oak, Maryland, would like clarity on the availability of
98 service to new lots.. Mr. Clarke stated all of the remaining 137 taps could be
99 available to new lots in the service area.

100
101 Commissioner Spies moved to approve Resolution 210 as consistent with the
102 Comprehensive Plan, with the provisions that the instruction page be excluded,
103 Commissioner Sullivan seconded the motion. The motion carried unanimously.
104

105 b. Critical Area Blue Ribbon Committee
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107 Mr. Coyman reviewed the six recommendations provided by the Blue Ribbon
108 Committee for the Planning Commission's review and comment per the County
109 Council direction. He asked if the Commissioners were comfortable with the
110 summary of their review from the February meeting.
111

112 Commissioner Hughes reminded that the Commission focused exclusively on the
113 Committee's six recommendations. He expressed concern about item 1.a.iii. of
114 the summary regarding turf grass, i.e., the second hundred feet of setback (buffer)
115 could be turf grass. He suspected the Critical Area Commission would not
116 approve this provision. Commissioner Fischer agreed. Commissioner Hughes
117 stated that would not be regarded as a boon were we required to eliminate the
118 second hundred feet of mixed vegetation in favor of turf grass on which the state
119 is promoting the use of lawn fertilizer. The provision of a view is a major property
120 owner concern. He recommended a strategy that provides for low level plantings
121 that retain selected views.
122

123 Mr. Coyman stated the Critical Area Staff would refer a decision like this to the
124 Department of Natural Resources for a recommendation. Commissioner Hughes
125 suggested making a recommendation that turf grass could be used in modified
126 planting area as long as post establishment it was not fertilized. Commissioner
127 Spies questioned if there was anything in the plan now that does not allow
128 fertilization of any of the buffer after establishment. He stated that turf grass was
129 not the only product that might be planted that would be fertilized. Commissioner
130 Hughes stated native species are recommended as they can survive without
131 fertilization.
132

133 Mr. Slear noted that the Committee did recognize and define native plantings.
134 However, he also believes the Critical Area Commission may not accept turf
135 grass in the 200 foot buffer.
136

137 Commissioner Hughes asked if a list of native plants exists. Mr. Slear responded
138 that there are several. Mr. Coyman observed that all native shrubs must be pruned
139 otherwise they would interfere with a view corridor and the Critical Area staff
140 have indicated that perhaps there was a way to introduce other less maintenance
141 intensive varieties.
142

143 Mr. Slear stated the buffer is defined as an existing naturally vegetated area or an
144 area established in vegetation and managed to protect aquatic wetland shoreline.
145 Somewhere along the line we said you cannot touch it, you can only cut it once a
146 year. Mr. Coyman noted that the Critical Area buffer definition refers to “natural
147 vegetation”, which is defined as plant material that does not require human
148 management.

149
150 Commissioner Hughes discussed having seen presentations of new ideas with
151 regards to landscaping with ground covers and small shrubs. He suggested these
152 concepts be investigated and incorporated into the County program. This would
153 result in a modified planning area with a non-monoculture in that second 100 feet
154 managed to remain in shrubs and herbaceous material.

155
156 Commissioner Spies observed that turf grass if unmowed provides a different
157 aesthetic and habitat than if regularly mowed. He believes that the management
158 technique of the second hundred feet is just as important as what is planted there.
159 The management will determine the look and its water quality and habitat value.
160 Commissioner Sullivan cautioned that avoiding a monoculture is important.

161
162 Mr. Slear stated that the Critical Area Commission seems to provide a one size
163 fits all program. The Committee’s recommendation focuses on a more localized
164 approach for the Lower Coastal Plane. Some Critical Area staff recognize this as
165 more sustainable. He proffered that adding the phrase, “as more particularly
166 defined by the Talbot County Planning Office” could address the native plant
167 restriction. Ms. Verdery stated that the staff has found the Critical Area staff
168 receptive to this approach.

169
170 Recommendation No. 2—The Commissioners accepted recommendation 2 as
171 proposed by the Committee.

172
173 Recommendation No. 3—The Commissioners accepted recommendation 3 as
174 proposed by the Committee.

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176 Recommendation No. 4— The Commissioners accepted recommendation 4 as
177 proposed by the Committee.

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179 Recommendation No. 5—Commissioner Fischer asked if existing stable shoreline
180 could be replaced by a living shoreline. Mr. Slear said that a shoreline must have
181 demonstrated erosion issues before a permit for a living shoreline can be obtained.
182 Commissioner Hughes asked what standard erosion rate is used; Mr. Slear said it
183 was site specific.

184
185 Commissioner Hughes expressed concern about homeowners installing shoreline
186 protection measure as a ruse for removing the treed buffer to create a view. Mr.
187 Slear stated first erosion must be demonstrated. Secondly, a buffer management
188 plan must be approved with three or four agencies checking the project’s impact.

Mr. Slear noted it is important to recognize the existence of a transitional habitat and its value as a best management practice. Commissioner Spies asked about this recommendation's impact on buffer width; Mr. Slear stated it does not change the setback.

Commissioner Hughes stated the question is (a) do we recommend that a credit be given towards buffer for an existing marsh, and (b) how much, if any, credit do they allow for a shoreline erosion project versus buffer establishment.

Commissioner Hughes asked about crediting large extents of marsh and who would regulate its maintenance. Mr. Slear noted the Critical Area extends 1,000 feet upland and as much as three miles from shore. Regulation of lands covered by water resides with the Maryland Department of the Environment.

The Commission arrived at a consensus of 3 to 1 to allow a credit, with a cap, for either existing or created marsh, with one dissent, Commissioner Hughes, on the point of crediting existing marsh toward buffer establishment.

Recommendation No. 6—Mr. Slear and staff discussed the makeup shoreline buffer and the role trees can play.

Roby Hurley, former Critical Area and Maryland Department of Planning planner, now consultant to Mid-Shore Board of Realtors stated that the Mid-Shore Board of Realtors would like to offer some suggestions. Recommended amendments will be sent to the planning staff and Planning Commission next week for consideration. Commissioner Hughes explained it is early to suggest specific changes to the zoning ordinance, but such language could be useful later. Commissioner Spies moved to table the recommendations pending review of a revised draft by staff for discussion at the March 5th meeting, seconded by Commissioner Sullivan. The motion carried unanimously.

4. New Business

- a. Administrative Variance—Martin Bollinger and Maura Bollinger—10799 Rich Neck Road, Claiborne, MD 21624, (map 14, grid 4, parcel 36, zoned Rural Conservation).

Mr. Ewing advised the Commission that this project has been postponed to a future meeting.

- b. Administrative Variance—Stephen McHale, #A201—9060 Quail Run Road, St. Michaels, MD 21663, (map 22, grid 16, parcel 225, zoned Rural Conservation). Mr. Ewing presented the staff report for a variance to construct a 395 square foot pervious deck expansion. The proposed expansion will be located no closer to mean high water than the existing dwelling at 35 feet. Staff recommendations include:

1. The applicant shall make an application to the Planning and Permits Department and follow all rules, procedures, and construction timelines as outlined regarding new construction.
2. The applicant shall commence construction on the proposed improvements within eighteen (18) months from the date of the Planning Department's notice to proceed.
3. The applicant shall build the deck to meet the Maryland Chesapeake Bay Critical Areas Commission's standards for pervious decks as follows:
 - a. Install decking with a minimum of 1/4" spacing between the decking strips;
 - b. Install approved native plants around the perimeter of the deck to minimize runoff.

Mr. Steve McHale appeared and had no further comments. There were no comments from the public. Commissioner Sullivan moved to recommend to the Planning Officer to approve the administrative variance request for Steve McHale at 9060 Quail Run Road, St. Michaels, Maryland, provided staff comments are complied with, seconded by Commissioner Fischer. The motion carried unanimously.

- c. Gary Brent—Gateway Waiver—1101 S. Talbot Street, St. Michaels, MD 21663 (map 32, grid 10, parcel 105, Lot 2A, zoned General Commercial). Mr. Coyman presented staff. Gary Brent appeared before the Commission representing Philadelphia Sign and their customer, PNC Bank. He withdrew the waiver request and will submit a plan that meets the gateway requirements.

d. Critical Area Mapping Project

Ms. Verdery summarized:

1. The project's history
2. The public information work which included:
 - a. In December of 2010 three public information meetings.
 - b. Letters to property owners who had a 50% or greater change in the area of the property within the critical area (218 letters).
 - c. County Council directed letters go to all affected land owners. An additional 1,445 notices for additional public information meetings held in Easton and St. Michaels were mailed.
3. The maps must be adopted within twenty-four months.
4. The current maps are based on the 1972 wetland maps and were digitized and overlaid on current resource maps.
5. New boundaries have created areas removed and added to the Critical Area. Example areas were displayed for the Commission.
6. The complete set of new maps is available on the Critical Area Commission's website.
7. Staff will prepare draft Critical Area redesignations for the Commission's review.

- 280 8. Zoning code modifications will be needed to address lot coverage
281 limitations on lands added to the Critical Area, which will be addressed
282 after this discussion.
283 9. Talbot County has 171,735 acres in the critical area. 67,186, acres are
284 designated Resource Conservation Area (RCA), 58,403 acres are
285 designated Limited Development Area (LDA), and almost 7,600 acres are
286 designated as Intensely Designated Area.
287 10. 1,668 acres have been added to the Critical Area
288 11. 837 acres have been removed from the Critical Area.
289

290 Commissioner Hughes asked if your property was suddenly in the critical area
291 now would your property be grandfathered. Ms. Verdery confirmed it would.
292 Commissioner Hughes commented that it would then be nonconforming.
293

294 Willard Parker, representing Avalon Limited Partnership, which is the developer
295 of Tilghman on the Chesapeake. He supported the zoning text revisions being
296 developed to address the lot coverage requirements as his client's property would
297 be dramatically affected unless some grandfathering is provided. Staff supports
298 this approach.
299

300 Commissioner Fischer commended Mark Cahoon for his work on this as did Ms.
301 Verdery. Commissioner Spies moved to table the Critical area mapping project,
302 seconded by Commissioner Fischer. The motion carried unanimously.
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304 e. Critical Area Lot Coverage
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306 Commissioner Spies moved to table the Critical Area lot coverage text
307 amendment, seconded by Commissioner Fischer. The motion carried
308 unanimously.
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310 **5. Discussions Items**

- 311 a. Cottage Industry—Ms. Verdery explained that during the County Council
312 meeting an inconsistency in the definition of bulk requirement and the standards
313 for a variance was discovered. Staff provided amendments to address the
314 inconsistency allowing the granting of variances for lot size and lot width. The
315 inconsistency is, in Section 190-82A(3)(c); a variance may not be granted to the
316 following: density, minimum lot size, and minimum lot width requirements. The
317 bulk requirements definition explains that bulk requirements are the numerical
318 regulations that govern the size, dimensions of lots, locations, dimensions of
319 structures within a certain zoning district or for certain land use. Bulk
320 requirements include setbacks, height, area, lot size, lot coverage and lot width.
321 Density requirements, regulations for specific land use requiring special
322 exceptions are not bulk requirements. The Commission agreed to continue the
323 discussion at a future meeting.
324

- b. May Planning Commission Meeting—The May meeting will be held in the Library.

6. Staff Matters

- a. Agricultural Buildings—The Commission discussed the definition of agricultural buildings related to zoning and the building code as several issues have arisen with such buildings. Specifically zoning certificates have been issued for buildings that changed and included non-agricultural spaces along with staff discovering the building code requires such spaces must receive a building permit rather than a zoning certificate. Staff is pursuing the agricultural community's input on these issues.

7. WorkSessions

8. Commission Matters

9. Adjournment—Commissioner Hughes adjourned the meeting at 12:25 p.m.

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